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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/164,509	09/30/1998	REINHARD KLEMM	KLEMM-2	6743

7590 07/30/2003
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EXAMINER

WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
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2141

Handwritten number 15

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/164,509

Applicant(s)
Klemm

Examiner
Stephan Willett

Art Unit
2141



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 3, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 2141

DETAILED ACTION

Multiple Rejections (I-III)

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

I. Horvitz et al. in view of Bryant

2. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horvitz et al. with Patent Number 6,067,565 in view of Bryant et al. with Patent Number 6,078,956.

3. Regarding claim(s) 1, 25, 27-29, Horvitz teaches a database communication network. Horvitz teaches prefetching Internet resources, col. 24, lines 4-5. Horvitz teaches fetching data dependent on round trip times based on send and receive times, col. 24, lines 12-20. Horvitz teaches fetching in descending order, col. 29, lines 39-40. Horvitz teaches the invention in the above claim(s) except for explicitly teaching fetching data dependent on GET round trip times. In that Horvitz operates to obtain data resources from the Internet the artisan would have looked to the Internet database arts for details of implementing prefetching of data. In that art, Bryant, a related database network, teaches that "measure response times as seen by an end user for requests submitted from a Web browser to a Web server", col. 2, lines 2-3 in order to provide better Web access. Bryant specifically teaches "the various components that comprise the

Art Unit: 2141

'response time' of a given HTTP request", col. 5, lines 7-26. Further, Bryant suggests that savings will result from implementing his downloading system. The motivation to incorporate limits on downloads insures that user data is readily available. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the time limits as taught in Bryant into the prefetching system described in Horvitz because Horvitz operates with data constraints and Bryant suggests that optimization can be obtained when data limitations are respected. Therefore, by the above rationale, the above claims are rejected.

4. Regarding claims 2, 18, Horvitz teaches parallel processing, col. 88, lines 59-64 and col. 9, lines 64-65. Thus, the above claim limitations are obvious in view of the combination.

5. Regarding claims 3, 19, Horvitz teaches prefetching with accessed and non-accessed servers, col. 24, lines 11-16. Thus, the above claim limitations are obvious in view of the combination.

6. Regarding claims 4, 20, Horvitz teaches fetching based on data size, col. 24, line 16 and col. 27, lines 55-58. Thus, the above claim limitations are obvious in view of the combination.

7. Regarding claims 5-7, 21-22, 26, Horvitz teaches fetching based on average access time statistics, col. 24, line 23-26 and Bryant teaches the same, col. 6, lines 64-66. Thus, the above claim limitations are obvious in view of the combination.

8. Regarding claims 8, Horvitz teaches prefetching after a page is obtained, col. 23, lines 53-55. Thus, the above claim limitations are obvious in view of the combination.

9. Regarding claims 9, Horvitz teaches updates based on new page selections, col. 9, lines 4-6. Thus, the above claim limitations are obvious in view of the combination.

Art Unit: 2141

10. Regarding claims 10, Horvitz teaches checking current cache for desired pages, col. 4, lines 35-37. Thus, the above claim limitations are obvious in view of the combination.

11. Regarding claims 11, 17, 23-24, Horvitz teaches filtering web pages, col. 23, lines 19-26. Thus, the above claim limitations are obvious in view of the combination.

12. Regarding claims 12-13, 24, Horvitz teaches filtering non-HTTP web pages, col. 23, lines 29-30. Thus, the above claim limitations are obvious in view of the combination.

13. Regarding claims 14, Horvitz teaches not prefetching large files, col. 24, lines 18-20. Thus, the above claim limitations are obvious in view of the combination.

14. Regarding claims 15-16, Horvitz teaches filtering based on response times, col. 28, lines 28-29 and col. 29, lines 35-37. Thus, the above claim limitations are obvious in view of the combination.

II. Kunkel et al. in view of Narayanaswami and Bryant

15. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunkel et al. with Patent Number 5,961,6031 in view of Narayanaswami with Patent Number 6,182,1135 and Bryant et al. with Patent Number 6,078,956.

16. Regarding claim(s) 1, 4-8, 14-16, 20-22, 25-29, Kunkel teaches a database communication network. Kunkel teaches prefetching Internet resources, col. 5, lines 1-5. Kunkel teaches fetching data dependent on round trip times based on send and receive times and data size as “by keeping statistics corresponding to the number of corrupted data packets received on each of the upstream channels”, col. 8, lines 14-16 and “if a hyperlink request acknowledge (ACK) is subsequently received with a pre-determined number of time periods”, col. 11, lines

Art Unit: 2141

61-63. Kunkel teaches fetching in descending order as various obvious dependent factors to determine which type of data is prefetched and the data's priority, col. 6, lines 39-40. Kunkel teaches the invention in the above claim(s) except for explicitly teaching fetching data dependent on round trip times and data size. In that Kunkel operates to obtain data resources from the Internet the artisan would have looked to the Internet database arts for details of implementing prefetching of data. In that art, Narayanaswami, a related database network, teaches that present Web pages "are resolved periodically so as to maintain a list of currently active links", col. 6, lines 17-22 based on one or more variables. Narayanaswami specifically teaches "to employ the user-specified criterion or criteria (e.g. TOD, or TOD and LOC, or TOC, LOC, and UBW)", col. 7, lines 10-13. Further, Narayanaswami suggests that savings will result from implementing his downloading system. In that art, Bryant, a related database network, teaches that "measure response times as seen by an end user for requests submitted from a Web browser to a Web server", col. 2, lines 2-3 in order to provide better Web access. Bryant specifically teaches "the various components that comprise the 'response time' of a given HTTP request", col. 5, lines 7-26. Further, Bryant suggests that savings will result from implementing his downloading system. The motivation to incorporate limits on downloads insures that user data is readily available. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the time and capacity limits as taught in Narayanaswami into the prefetching system described in Kunkel because Kunkel operates with data constraints and Narayanaswami suggests that optimization can be obtained when data limitations are respected. Therefore, by the above rational, the above claims are rejected.

Art Unit: 2141

17. Regarding claims 2 and 18, Kunkel teaches parallel fetching at col. 5, lines 28-29. Thus, the above claim limitations are obvious in view of the combination.

18. Regarding claims 3, 10 and 19, Kunkel teaches prefetching based on previous accesses at col. 5, lines 57-60. Thus, the above claim limitations are obvious in view of the combination.

19. Regarding claims 9, Kunkel teaches termination of prefetching at col. 13, lines 29-31. Thus, the above claim limitations are obvious in view of the combination.

20. Regarding claims 11-13 and 23-24, Kunkel teaches filtering data at col. 5, 7, 8, lines 65-67, 59-63, 6-10. Thus, the above claim limitations are obvious in view of the combination.

III. Kunkel et al. in view of Vaid et al. and Bryant

21. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunkel et al. with Patent Number 5,961,6031 in view of Vaid et al. with Patent Number 6,119,235 and Bryant et al. with Patent Number 6,078,956.

22. Regarding claim(s) 1, 4-8, 14-16, 20-22, 25-29, Kunkel teaches a database communication network. Kunkel teaches prefetching Internet resources at col. 5, lines 1-5. Kunkel teaches fetching data dependent on round trip times base on send and receive times and data size as “by keeping statistics corresponding to the number of corrupted data packets received on each of the upstream channels”, col. 8, lines 14-16 and “if a hyperlink request acknowledge (ACK) is subsequently received with a pre-determined number of time periods”, col. 11, lines 61-63. Kunkel teaches the invention in the above claim(s) except for explicitly teaching fetching data dependent on round trip times and data size. Kunkel teaches fetching in descending order as various obvious dependent factors to determine which type of data is prefetched and the data’s

Art Unit: 2141

priority, col. 6, lines 39-40. Kunkel teaches the invention in the above claim(s) except for explicitly teaching fetching data dependent on round trip times and data size. In that Kunkel operates to obtain data resources from the Internet the artisan would have looked to the Internet database arts for details of implementing prefetching of data. In that art, Vaid, a related database network, teaches a system to schedule downloading of data in order to provide optimized computer usage. Vaid specifically teaches "estimating a bit rate over a round-trip-time between the data source and the data receiver", abstract. Further, Vaid suggests that savings will result from implementing his downloading system. In that art, Bryant, a related database network, teaches that "measure response times as seen by an end user for requests submitted from a Web browser to a Web server", col. 2, lines 2-3 in order to provide better Web access. Bryant specifically teaches "the various components that comprise the 'response time' of a given HTTP request", col. 5, lines 7-26. Further, Bryant suggests that savings will result from implementing his downloading system. The motivation to incorporate limits on downloads insures that user limits are respected. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the time and capacity limits as taught in Vaid into the prefetching system described in Kunkel because Kunkel operates with data constraints and Vaid suggests that optimization can be obtained when data limitations are respected. Therefore, by the above rationale, the above claims are rejected.

23. Regarding claims 2 and 18, Kunkel teaches parallel fetching at col. 5, lines 28-29. Thus, the above claim limitations are obvious in view of the combination.

24. Regarding claims 3, 10 and 19, Kunkel teaches prefetching based on previous accesses at

Art Unit: 2141

col. 5, lines 57-60. Thus, the above claim limitations are obvious in view of the combination.

25. Regarding claims 9, Kunkel teaches termination of prefetching at col. 13, lines 29-31.

Thus, the above claim limitations are obvious in view of the combination.

26. Regarding claims 11-13 and 23-24, Kunkel teaches filtering data at col. 5, 7, 8, lines 65-67, 59-63, 6-10. Thus, the above claim limitations are obvious in view of the combination.

Response to Amendment

27. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.

28. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

29. Applicant admits "that prefetching is performed according to an ascending order of prefetch times", Paper No. 14, Page 8, lines 14-15 and "Vaid estimates the round-trip times of TCP/IP packets", Paper No. 14, Page 9, lines 10-11. Implicitly and impliedly, various orders and round-trip times are taught and language identical or verbatim is not required in an obvious rejection. The limited interpretation of the teachings is not reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. The references should not be read in a vacuum, the teachings are not mutually exclusive, and must be taken in context of what was reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter

Art Unit: 2141

pertains. "[The] specification, having described the whole, necessarily described the part remaining", In re Johnson, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977), see also Ex parte Grasselli, 231 USPQ 393 (Bd, App. 1983) and negative limitations "tended to define the invention in terms of what it was not, rather than pointing out the invention", MPEP 2172.05(I). A negative type limitation, that implicitly teaches other related parts remaining, to avoid obvious elements of a reference does not exude novelty of the whole. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

Conclusion

30. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

31. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner

Art Unit: 2141

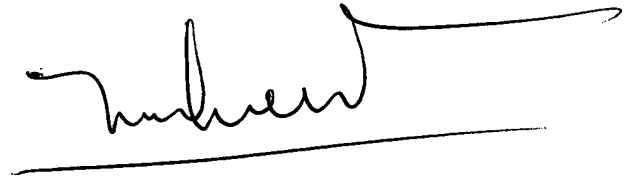
can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

33. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

34. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.

sfw

July 24, 2003

A handwritten signature in black ink, appearing to read 'Le Hien Luu', written over a horizontal line.

LE HIEN LUU
PRIMARY EXAMINER